

1 JASON M. FRIERSON
2 United States Attorney
3 Nevada Bar No. 7709
4 DANIEL D. HOLLINGSWORTH
5 Assistant United States Attorney
6 Nevada Bar No. 1925
501 Las Vegas Boulevard South, Suite 1100
Las Vegas, Nevada 89101
(702) 388-6336
Daniel.Hollingsworth@usdoj.gov
Attorneys for the United States

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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA,
13 v.
14 CAROL KIRBY,
15 Defendant.

2:23-CR-191-APG-NJK

ORDER

**Reply to Non-Response to United States
of America's Motion to Prevent the Sale
of 6800 E. Lake Mead Blvd. #2076, Las
Vegas, Nevada 89156, ECF No. 22**

16 The government certifies this Reply is filed timely.¹

17 The government replies to the failure to respond by Clark County Treasurer
18 (Treasurer) and the failure to respond by Mountainside Unit Owners Association, aka
19 Mountainside Community Association (Mountainside HOA), to the Government's Motion
20 to Prevent the Sale of 6800 E. Lake Mead Blvd. #2076, Las Vegas, Nevada 89156 (6800
21 Lake Mead).² The government filed the Motion on May 24, 2024, and served the Motion on
22 Clark County and the Treasurer by personal service on June 12, 2024, served Mountainside
23 HOA and its affiliates by personal service on June 18, 2024, and served potential interested
24 parties by regular first class mail and certified mail return receipt requested on May 31,
25 2024.³ Because Clark County, the Treasurer, and Mountainside HOA and its affiliates failed

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27 ¹ LR 7-2(b) and LCR 12-1(a)(3).
28 ² United States of America's Motion to Prevent the Sale of 6800 E. Lake Mead Blvd. #2076,
Las Vegas, Nevada 89156 (Motion), ECF No. 22.
³ Motion, ECF No. 22; Certificate of Service, ECF No. 41.

1 to respond to the government's Motion, they consented to granting the motion and
 2 preventing the sale of 6800 Lake Mead.⁴

3 The government requested an Order preventing the Treasurer's tax sale and
 4 Mountainside HOA's default proceedings and foreclosure sale because 21 U.S.C. § 853(k)
 5 prohibits the Treasurer and the HOA from selling the property since the government has
 6 alleged 6800 Lake Mead is subject to forfeiture in the indictment; the United States has
 7 authority to protect its forfeiture interest in 6800 Lake Mead under 21 U.S.C. § 853(c) and
 8 853(e)(1)(A); and the Property Clause and Supremacy Clause of the U.S. Constitution
 9 prevent the Treasurer and the HOA from disposing of property belonging to the United
 10 States.

11 Section 853(k) prohibits any person or entity to "commence an action at law or
 12 equity against the United States concerning the validity of" her, his or its "alleged interest in
 13 the property subsequent to the filing of an indictment... alleging that the property is subject
 14 to forfeiture...."⁵

15 The United States has authority to seek the preservation of property for forfeiture.
 16 Under 21 U.S.C. § 853(c), the property "vests in the United States upon the commission of
 17 the act giving rise to [the] forfeiture...."⁶ Under 21 U.S.C. § 853(e)(1)(A), "the court
 18 may...take any... action to preserve the availability of property... upon the filing of an
 19 indictment... charging a violation... for which criminal forfeiture may be ordered...."⁷

20 The interests of the Treasurer and Mountainside HOA do not supersede the United
 21 States' interest in the property⁸ and the non-judicial act to sell the property is an improper
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23 ⁴ LCR 47-3 (formerly LCR 47-9) ("The failure of an opposing party to include points and
 24 authorities in response to any motion constitutes a consent to granting the motion"); *United
 25 States v. Martinez*, Nos. 2:04-CR-00286-KJD-(GWF) and 2:05-CV-1527-KJD-(GWF), 2006
 26 WL 1215173, 1 (D. Nev. May 2, 2006); *United States v. Martinez-Rodriguez*, No. 2:08-CR-
 27 0093-JCM-(RJJ), 2009 WL 211906, 1 (D. Nev. Jan. 23, 2009); *Federal Trade Commission v.
 28 OMICS Group Inc.*, No. 2:16-CV-02022-GMN-VCF, 2017 WL 6806802, 2 (D. Nev. Dec. 15,
 2017).

⁵ 21 U.S.C. § 853(k) (ellipses added); *United States v. MacInnes*, 223 F. App'x 549, 552 (9th Cir. 2007) (unpublished); *United States v. Lazarenko*, 476 F.3d 642, 647-48 (9th Cir. 1999).

⁶ 21 U.S.C. § 853(c) (brackets and ellipsis added).

⁷ 21 U.S.C. § 853(e)(1)(A) (ellipses added).

⁸ *Rust v. Johnson*, 597 F.2d 174, 179 (9th Cir. 1979), superseded by statute on other grounds.

1 act against the United States and violates the Property Clause, Article IV, Section 3, Clause
2, and the Supremacy Clause of Article VI, Clause 2 of the United States Constitution.⁹

3 A tax sale and a default foreclosure sale are statutorily prohibited at this time because
4 the United States has a forfeiture interest in the property. The Treasurer and Mountainside
5 HOA cannot sell 6800 Lake Mead under 21 U.S.C. § 853, the Property Clause, and the
6 Supremacy Clause.

7 **CONCLUSION**

8 Based on the foregoing reasons, this Court should enter an Order to prevent the
9 Clark County Treasurer from proceeding with a Tax Sale and to prevent Mountainside Unit
10 Owners Association, aka Mountainside Community Association, from proceeding with a
11 HOA default foreclosure sale of 6800 E. Lake Mead Blvd. #2076, Las Vegas, Nevada
12 89156, limited during the pendency of this case so that the Clark County Treasurer and the
13 HOA is not prohibited from ever selling this property via tax sale or HOA foreclosure sale
14 should future owners default.

15 Dated: August 6, 2024.

16 Respectfully submitted,

17 JASON M. FRIERSON
United States Attorney

18 /s/ Daniel D. Hollingsworth
19 DANIEL D. HOLLINGSWORTH
Assistant United States Attorney

21 IT IS SO ORDERED:

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24 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

26 Dated: August 19, 2024

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28 ⁹ See *Id.*; see *Yunis v. United States*, 118 F. Supp. 2d 1024, 1031 (C.D. Cal. 2000); see *Kleppe v. New Mexico*, 426 U.S. 529 (1976).